



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

MAR 28 2007

Paul E. Sullivan, Esq.
1010 Wisconsin Ave, N.W.
Suite 725
Washington, DC 20007

Richard M. Stock, Esq.
Gardner Carton & Douglas LLP
191 N. Wacker Drive, Suite 3700
Chicago, IL 60606

RE: MUR 5410
Oberweis Dairy, Inc.
Robert Renaut
James D. Oberweis
Oberweis for U.S. Senate 2004, Inc. and
Joseph M. Wiegand, in his official
capacity as treasurer

Dear Messrs. Sullivan and Stock:

On January 19, 2007, the Federal Election Commission accepted the signed conciliation agreement and civil penalty that you submitted on behalf of your clients, in settlement of violations of 2 U.S.C. §§ 441b and 434(b), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. *See* 2 U.S.C. § 437g(a)(4)(B).

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Enclosed you will find a copy of the fully executed conciliation agreement for your files. In addition, enclosed is a copy of the General Counsel's Report, which is dispositive as to certain allegations in the complaint. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Dominique Dillenseger
Dominique Dillenseger
Attorney

Enclosures
Conciliation Agreement
General Counsel's Report

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 5410
Oberweis Dairy, Inc.)
Robert Renaut)
James D. Oberweis)
Oberweis for U.S. Senate 2004, Inc. and)
Joseph M. Wiegand, in his official)
capacity as treasurer)

CONCILIATION AGREEMENT

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This matter was initiated by a signed, sworn, and notarized complaint by Tim Timoney, Chairman of the Democratic party of Sangamon County, Illinois. The Federal Election Commission ("Commission") found reason to believe that Respondents Oberweis Dairy, Inc., Robert Renaut and James D. Oberweis violated 2 U.S.C. § 441b and that Respondents Oberweis for U.S. Senate 2004, Inc., and its treasurer violated 2 U.S.C. §§ 441b and 434(b)

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U S C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

Parties

1. Oberweis Dairy, Inc. ("Oberweis Dairy") is a family-owned business that processes and delivers milk products directly to homes in Illinois, Indiana, and Missouri, and maintains thirty-two ice cream and dairy stores in the Chicago and St. Louis metropolitan areas

2. Robert Renaut is President and CEO of Oberweis Dairy.

3. James D. Oberweis is Chairman of Oberweis Dairy and was a 2004 candidate for U.S. Senate in Illinois.

4. Oberweis for U.S. Senate 2004, Inc. is the principal campaign committee of James D. Oberweis and Joseph M. Wiegand is its treasurer.¹

Facts

5. James D. Oberweis, Chairman of Oberweis Dairy, had previously been featured in advertisements to promote various businesses with which he was involved. Beginning in 1998, and continuing on an annual basis thereafter, Mr. Oberweis urged Robert Renaut, Oberweis Dairy's President and CEO, to engage in broadcast television advertising for Oberweis Dairy.

6. In early 2003, Oberweis Dairy management decided to produce and air the Dairy's first broadcast television advertisement campaign.

7. Robert Renaut and Mark Vance, Vice-President of Marketing, were responsible for interviewing and suggesting to management the producer of the proposed advertising. James Oberweis suggested to Robert Renaut that Oberweis Dairy consider Don Walter to produce the Dairy advertising because Mr. Walter had previously done good work on the advertising for Oberweis Securities and Oberweis' 2002 Senate campaign. Robert Renaut interviewed several

¹ On July 19, 2005, Oberweis for U S Senate 2004, Inc filed an amended Statement of Organization reflecting Joseph M Wiegand as the new treasurer Richard G Hawks, the former treasurer, was treasurer during the period in question

producers for the creation of the broadcast television advertisements and ultimately decided to have the advertisements produced by Mr. Walter, who at that time was with Aspect Media, Inc.

8. In December 2003 and January 2004, Oberweis Dairy ran a television advertisement, "Sunny Side Up," that aired in the Champaign, Springfield, Decatur, Peoria and Bloomington, Illinois broadcast television markets. The advertisement prominently featured Mr. Oberweis as the spokesperson and "public face" of Oberweis Dairy making breakfast for a pair of home delivery customers and identified Mr. Oberweis by name as the Chairman of Oberweis Dairy. Mr. Oberweis had an opportunity to review the advertisement script before it was finalized. Mr. Oberweis contends that he made only "minor grammatical corrections" to the script "on the day of the filming."

9. The advertisement ran within 120 days of the March 16, 2004, primary election.

10. Oberweis Dairy spent approximately \$6,224 on production costs for the "Sunny Side Up" advertisement and no additional production expenses were incurred during December 2003 and January 2004. The Dairy spent \$37,630 for airtime costs in December 2003 and January 2004, for a total cost of \$43,854.

11. James Oberweis contends that he was made aware by the Committee's campaign manager that new BCRA-related regulations placed some type of restrictions on Federal candidates appearing in advertising during a certain number of days before the date of the Federal election. In June 2003, while James Oberweis was considering running for U.S. Senate, Oberweis Dairy sought advice of legal counsel regarding whether Oberweis Dairy, Inc. could engage in television advertising if Mr. Oberweis ran for Federal office. Oberweis Dairy requested and secured a written opinion letter from legal counsel on July 7, 2003, confirming the ability of Oberweis Dairy, Inc. to engage in corporate advertising on television, cable, radio or

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satellite systems as long as the advertising was not aired within thirty (30) days of a Primary Election or sixty (60) days of a General Election. Respondents contend that they acted in good faith and relied upon the advice of counsel that the advertisement would not violate Federal election laws. Respondents contend they reasonably relied upon this advice in proceeding to air the advertisement and believed the advertisement complied with Federal election laws.

Applicable Law

12. Under the Act, corporations may not make contributions “in connection with” a Federal election and corporate officers may not consent to such contributions. 2 U.S.C. § 441b(a). A contribution includes a gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing a Federal election. 2 U.S.C. § 431(8)(A)(i). The term “anything of value” includes in-kind contributions. 11 C.F.R. § 100.52(d)(1). Each report filed by a political committee shall disclose the information specified in 2 U.S.C. § 434(b).

13. The Act defines in-kind contributions as, *inter alia*, expenditures made by any person “in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents.” 2 U.S.C. § 441a(a)(7)(B)(i). Under 11 C.F.R. § 109.21, a communication is coordinated if it: (1) is paid for by a person other than the candidate or candidate’s committee; (2) satisfies one or more of the four content standards set forth at 11 C.F.R. § 109.21(c); and (3) satisfies one or more of the six conduct standards set forth at 11 C.F.R. § 109.21(d).

14. The “Sunny Side Up” advertisement meets the first prong of the coordination test because it was paid for by Oberweis Dairy (a person other than the candidate or candidate’s committee).

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15. A communication satisfies the content standard if it is, *inter alia*, a public communication that (i) refers to a clearly identified candidate for Federal Office, (ii) is disseminated within 120 days of an election, and (iii) is directed to voters in the jurisdiction of the clearly identified candidate. 11 C.F.R. § 109.21(c)(4) (2004).

16. An advertisement is a public communication if it is disseminated “by means of any broadcast, cable, or satellite communication.” 11 C.F.R. § 100.26. The “Sunny Side Up” advertisement was aired on cable and broadcast television and thus meets the definition of a public communication.

17. The definition of “clearly identified candidate” includes, *inter alia*, the name or photograph of the candidate. 11 C.F.R. § 100.17. The “Sunny Side Up” advertisement refers to a “clearly identified candidate” because it features Mr. Oberweis, a candidate for Federal office, and identifies Mr. Oberweis by name.

18. The “Sunny Side Up” advertisement ran in December 2003 and January 2004, which was within 120 days of the March 16, 2004, primary election.

19. A communication is “directed to” voters in the jurisdiction of a Senate candidate if it is distributed or broadcast anywhere within the state in which the candidate is running Coordination E&J, 68 Fed. Reg. 421-01, 431. *See also* Advisory Opinion 2004-29. The “Sunny Side Up” advertisement was broadcast in Illinois, specifically in the Champaign, Springfield, Peoria, Decatur and Bloomington, Illinois television markets. Thus, the advertisement was directed to Illinois voters within the meaning of 11 C.F.R. § 109.21(c)(4)(iii).

20. Because Oberweis Dairy aired the “Sunny Side Up” television advertisement, which clearly identifies Mr. Oberweis, in Illinois within 120 days of the primary election, the “content” element of section 109.21 is satisfied.

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21. Communications that meet the conduct standard of section 11 C.F.R. § 109.21(d) include, *inter alia*, those made where the candidate is “materially involved in decisions” regarding: the content of the communication; the intended audience; the means or mode of the communication; the specific media outlet used; the timing or frequency of the communication; or the size or prominence of a printed communication or duration of a communication by means of a broadcast, cable or satellite. In addition, the Commission has found that a candidate’s appearance in a communication would be sufficient to conclude that the candidate was materially involved in decisions regarding that communication, noting that it would be “highly implausible that a Federal candidate would appear in a communication without being materially involved in one or more of the listed decisions regarding the communication.” *See* AOs 2004-29, 2004-1, and 2003-25. In addition to appearing and acting in the “Sunny Side Up” advertisement, Mr. Oberweis urged the Dairy to advertise on broadcast television, recommended the producer for the advertisements, and had an opportunity to review the final script. Based on the above, the “Sunny Side Up” advertisement meets the conduct standard.

Violations

V. Respondents contend they acted in good faith, in reliance on the advice of counsel and without intent or knowledge that a violation would result. To avoid the costs and distractions of protracted litigation, Respondents James Oberweis, Oberweis Dairy, Inc. and Robert Renaut, will not contest the finding that they violated 2 U.S.C § 441b and Respondent Oberweis for U.S. Senate 2004, Inc. and Joseph M. Weigand, in his official capacity as treasurer, will not contest the finding of the Commission that they violated 2 U.S C §§ 441b and 434(b). The Commission has made no findings that the violations in this matter were

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knowing and willful. Respondents will cease and desist from violating 2 U.S.C. § 441b and/or 2 U.S.C. § 434(b).

Civil Penalty

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Twenty-One Thousand dollars (\$21,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

Other Provisions

VII. Respondents Oberweis for U.S Senate 2004, Inc. and Joseph M. Wiegand, in his official capacity as treasurer, will amend the Committee's disclosure reports accordingly.

VIII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

IX. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

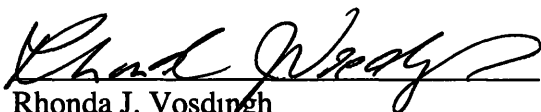
X. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

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XI This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

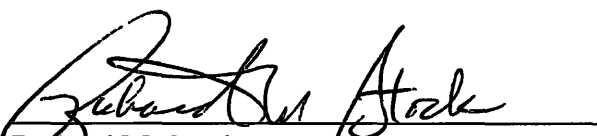
FOR THE COMMISSION:

Lawrence H. Norton
General Counsel

BY: 
Rhonda J. Vosdinger
Associate General Counsel
for Enforcement


2/5/07
Date

FOR THE RESPONDENTS OBERWEIS DAIRY, INC. AND ROBERT RENAUT:

By: 
Richard M. Stock
Gardner Carton & Douglas LLP

Date: 12/12/06

FOR THE RESPONDENTS JAMES D. OBERWEIS AND OBERWEIS FOR U.S. SENATE 2004 AND JOSEPH M. WIEGAND, IN HIS OFFICIAL CAPACITY AS TREASURER:

By: 
Paul E. Sullivan
Sullivan & Associates, PLLC
Attorneys at Law

Date: 12/29/06

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